

96TH CONGRESS }
2d Session }

HOUSE OF REPRESENTATIVES

REPORT
No. 96-1436

LEGISLATIVE COUNSEL
FILE COPY

CLASSIFIED INFORMATION PROCEDURES ACT

SEPTEMBER 30, 1980.—Ordered to be printed

Mr. BOLAND, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 1482]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1482) to provide certain pretrial, trial and appellate procedures for criminal cases involving classified information, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment to the text of the bill insert the following:

DEFINITIONS

SEC. 1. (a) "Unclassified information", as used in this Act, means any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security and any restricted data, as defined in paragraph r. of section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

(b) "National security", as used in this Act, means the national defense and foreign relations of the United States.

PRETRIAL CONFERENCE

SEC. 2. At any time after the filing of the indictment or information, any party may move for a pretrial conference to consider matters relating to classified information that may arise in connection with the prosecution. Following such motion, or on its own motion, the court

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shall promptly hold a pretrial conference to establish the timing of requests for discovery, the provision of notice required by section 5 of this Act, and the initiation of the procedure established by section 6 of this Act. In addition, at the pretrial conference the court may consider any matters which relate to classified information or which may promote a fair and expeditious trial. No admission made by the defendant or by any attorney for the defendant at such a conference may be used against the defendant unless the admission is in writing and is signed by the defendant and by the attorney for the defendant.

PROTECTIVE ORDERS

SEC. 3. Upon motion of the United States, the court shall issue an order to protect against the disclosure of any classified information disclosed by the United States to any defendant in any criminal case in a district court of the United States.

DISCOVERY OF CLASSIFIED INFORMATION BY DEFENDANTS

SEC. 4. The court, upon a sufficient showing, may authorize the United States to delete specified items of classified information from documents to be made available to the defendant through discovery under the Federal Rules of Criminal Procedure, to substitute a summary of the information for such classified documents, or to substitute a statement admitting relevant facts that the classified information would tend to prove. The court may permit the United States to make a request for such authorization in the form of a written statement to be inspected by the court alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the statement of the United States shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

NOTICE OF DEFENDANT'S INTENTION TO DISCLOSE CLASSIFIED INFORMATION

SEC. 5. (a) NOTICE BY DEFENDANT.—If a defendant reasonably expects to disclose or to cause the disclosure of classified information in any manner in connection with any trial or pretrial proceeding involving the criminal prosecution of such defendant, the defendant shall, within the time specified by the court or, where no time is specified, within thirty days prior to trial, notify the attorney for the United States and the court in writing. Such notice shall include a brief description of the classified information. Whenever a defendant learns of additional classified information he reasonably expects to disclose at any such proceeding, he shall notify the attorney for the United States and the court in writing as soon as possible thereafter and shall include a brief description of the classified information. No defendant shall disclose any information known or believed to be classified in connection with a trial or pretrial proceeding until notice has been given under this subsection and until the United States has been afforded a reasonable opportunity to seek a determination pursuant to the procedure set forth in section 6 of this Act, and until the time for the

United States to appeal such determination under section 7 has expired or any appeal under section 7 by the United States is decided.

(b) *FAILURE TO COMPLY.*—If the defendant fails to comply with the requirements of subsection (a) the court may preclude disclosure of any classified information not made the subject of notification and may prohibit the examination by the defendant of any witness with respect to any such information.

PROCEDURE FOR CASES INVOLVING CLASSIFIED INFORMATION

SEC. 6. (a) *MOTION FOR HEARING.*—Within the time specified by the court for the filing of a motion under this section, the United States may request the court to conduct a hearing to make all determinations concerning the use, relevance, or admissibility of classified information that would otherwise be made during the trial or pretrial proceeding. Upon such a request, the court shall conduct such a hearing. Any hearing held pursuant to this subsection (or any portion of such hearing specified in the request of the Attorney General) shall be held in camera if the Attorney General certifies to the court in such petition that a public proceeding may result in the disclosure of classified information. As to each item of classified information, the court shall set forth in writing the basis for its determination. Where the United States' motion under this subsection is filed prior to the trial or pretrial proceeding, the court shall rule prior to the commencement of the relevant proceeding.

(b) *NOTICE.*—(1) Before any hearing is conducted pursuant to a request by the United States under subsection (a), the United States shall provide the defendant with notice of classified information that is at issue. Such notice shall identify the specific classified information at issue whenever that information previously has been made available to the defendant by the United States. When the United States has not previously made the information available to the defendant in connection with the case, the information may be described by generic category, in such form as the court may approve, rather than by identification of the specific information of concern to the United States.

(2) Whenever the United States requests a hearing under subsection (a), the court, upon request of the defendant, may order the United States to provide the defendant, prior to trial, such details as to the portion of the indictment or information at issue in the hearing as are needed to give the defendant fair notice to prepare for the hearing.

(c) *ALTERNATIVE PROCEDURE FOR DISCLOSURE OF CLASSIFIED INFORMATION.*—(1) Upon any determination by the court authorizing the disclosure of specific classified information under the procedures established by this section, the United States may move that, in lieu of the disclosure of such specific classified information, the court order—

(A) the substitution for such classified information of a statement admitting relevant facts that the specific classified information would tend to prove; or

(B) the substitution for such classified information of a summary of the specific classified information.

The court shall grant such a motion of the United States if it finds that the statement or summary will provide the defendant with sub-

stantially the same ability to make his defense as would disclosure of the specific classified information. The court shall hold a hearing on any motion under this section. Any such hearing shall be held in camera at the request of the Attorney General.

(2) The United States may, in connection with a motion under paragraph (1), submit to the court an affidavit of the Attorney General certifying that disclosure of classified information would cause identifiable damage to the national security of the United States and explaining the basis for the classification of such information. If so requested by the United States, the court shall examine such affidavit in camera and *ex parte*.

(d) **SEALING OF RECORDS OF IN CAMERA HEARINGS.**—If at the close of an in camera hearing under this Act (or any portion of a hearing under this Act that is held in camera) the court determines that the classified information at issue may not be disclosed or elicited at the trial or pretrial proceeding, the record of such in camera hearing shall be sealed and preserved by the court for use in the event of an appeal. The defendant may seek reconsideration of the court's determination prior to or during trial.

(e) **PROHIBITION ON DISCLOSURE OF CLASSIFIED INFORMATION BY DEFENDANT, RELIEF FOR DEFENDANT WHEN UNITED STATES OPPOSES DISCLOSURE.**—(1) Whenever the court denies a motion by the United States that it issue an order under subsection (c) and the United States files with the court an affidavit of the Attorney General objecting to disclosure of the classified information at issue, the court shall order that the defendant not disclose or cause the disclosure of such information.

(2) Whenever a defendant is prevented by an order under paragraph (1) from disclosing or causing the disclosure of classified information, the court shall dismiss the indictment or information; except that, when the court determines that the interests of justice would not be served by dismissal of the indictment or information, the court shall order such other action, in lieu of dismissing the indictment or information, as the court determines is appropriate. Such action may include, but need not be limited to—

(A) dismissing specified counts of the indictment or information;

(B) finding against the United States on any issue as to which the excluded classified information relates; or

(C) striking or precluding all or part of the testimony of a witness.

An order under this paragraph shall not take effect until the court has afforded the United States an opportunity to appeal such order under section 7, and thereafter to withdraw its objection to the disclosure of the classified information at issue.

(f) **RECIPROCITY.**—Whenever the court determines pursuant to subsection (a) that classified information may be disclosed in connection with a trial or pretrial proceeding, the court shall, unless the interests of fairness do not so require, order the United States to provide the defendant with the information it expects to use to rebut the classified information. The court may place the United State under a continuing duty to disclose such rebuttal information. In the United

States fails to comply with its obligation under this subsection, the court may exclude any evidence not made the subject of a required disclosure and may prohibit the examination by the United States of any witness with respect to such information.

INTERLOCUTORY APPEAL

SEC. 7. (a) An interlocutory appeal by the United States taken before or after the defendant has been placed in jeopardy shall lie to a court of appeals from a decision or order of a district court in a criminal case authorizing the disclosure of classified information, imposing sanctions for nondisclosure of classified information, or refusing a protective order sought by the United States to prevent the disclosure of classified information.

(b) An appeal taken pursuant to this section either before or during trial shall be expedited by the court of appeals. Prior to trial, an appeal shall be taken within ten days after the decision or order appealed from and the trial shall not commence until the appeal is resolved. If an appeal is taken during trial, the trial court shall adjourn the trial until the appeal is resolved and the court of appeals (1) shall hear argument on such appeal within four days of the adjournment of the trial, (2) may dispense with written briefs other than the supporting materials previously submitted to the trial court, (3) shall render its decision within four days of argument on appeal, and (4) may dispense with the issuance of a written opinion in rendering its decision. Such appeal and decision shall not affect the right of the defendant, in a subsequent appeal from a judgment of conviction, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

INTRODUCTION OF CLASSIFIED INFORMATION

SEC. 8. (a) CLASSIFICATION STATUS.—Writings, recordings, and photographs containing classified information may be admitted into evidence without change in their classification status.

(b) PRECAUTIONS BY COURT.—The court, in order to prevent unnecessary disclosure of classified information involved in any criminal proceeding, may order admission into evidence of only part of a writing, recording, or photograph, or may order admission into evidence of the whole writing, recording, or photograph with excision of some or all of the classified information contained therein, unless the whole ought in fairness be considered.

(c) TAKING OF TESTIMONY.—During the examination of a witness in any criminal proceeding, the United States may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible. Following such an objection, the court shall take such suitable action to determine whether the response is admissible as will safeguard against the compromise of any classified information. Such action may include requiring the United States to provide the court with a proffer of the witness' response to the question or line of inquiry and requiring the defendant to provide the court with a proffer of the nature of the information he seeks to elicit.

SECURITY PROCEDURES

SEC. 9. (a) Within one hundred and twenty days of the date of the enactment of this Act, the Chief Justice of the United States, in consultation with the Attorney General, the Director of Central Intelligence, and the Secretary of Defense, shall prescribe rules establishing procedures for the protection against unauthorized disclosure of any classified information in the custody of the United States district courts, courts of appeal, or Supreme Court. Such rules, and any changes in such rules, shall be submitted to the appropriate committees of Congress and shall become effective forty-five days after such submission.

(b) Until such time as rules under subsection (a) first become effective, the Federal courts shall in each case involving classified information adopt procedures to protect against the unauthorized disclosure of such information.

IDENTIFICATION OF INFORMATION RELATED TO THE NATIONAL DEFENSE

SEC. 10. In any prosecution in which the United States must establish that material relates to the national defense or constitutes classified information, the United States shall notify the defendant, within the time before trial specified by the court, of the portions of the material that it reasonably expects to rely upon to establish the national defense or classified information element of the offense.

AMENDMENT TO THE ACT

SEC. 11. Sections 1 through 10 of this Act may be amended as provided in section 2076, title 28, United States Code.

ATTORNEY GENERAL GUIDELINES

SEC. 12. (a) Within one hundred and eighty days of enactment of this Act, the Attorney General shall issue guidelines specifying the factors to be used by the Department of Justice in rendering a decision whether to prosecute a violation of Federal law in which, in the judgment of the Attorney General, there is a possibility that classified information will be revealed. Such guidelines shall be transmitted to the appropriate committees of Congress.

(b) When the Department of Justice decides not to prosecute a violation of Federal law pursuant to subsection (a), an appropriate official of the Department of Justice shall prepare written findings detailing the reasons for the decision not to prosecute. The findings shall include—

- (1) the intelligence information which the Department of Justice officials believe might be disclosed,*
- (2) the purpose for which the information might be disclosed,*
- (3) the probability that the information would be disclosed,*
- and*
- (4) the possible consequences such disclosure would have on the national security.*

REPORTS TO CONGRESS

SEC. 13. (a) *Consistent with applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches, the Attorney General shall report orally or in writing semiannually to the Permanent Select Committee on Intelligence of the United States House of Representatives, the Select Committee on Intelligence of the United States Senate, and the chairmen and ranking minority members of the Committees on the Judiciary of the Senate and House of Representatives on all cases where a decision not to prosecute a violation of Federal law pursuant to Section 12(a) has been made.*

(b) *The Attorney General shall deliver to the appropriate committees of Congress a report concerning the operation and effectiveness of this Act and including suggested amendments to this Act. For the first three years this Act is in effect, there shall be a report each year. After three years, such reports shall be delivered as necessary.*

FUNCTIONS OF ATTORNEY GENERAL MAY BE EXERCISED BY DEPUTY
ATTORNEY GENERAL OR A DESIGNATED ASSISTANT ATTORNEY GENERAL

SEC. 14. *The functions and duties of the Attorney General under this Act may be exercised by the Deputy Attorney General or by an Assistant Attorney General designated by the Attorney General for such purpose and may not be delegated to any other official.*

EFFECTIVE DATE

SEC. 15. *The provisions of this Act shall become effective upon the date of the enactment of this Act, but shall not apply to any prosecution in which an indictment or information was filed before such date.*

SHORT TITLE

SEC. 16. *That this Act may be cited as the "Classified Information Procedures Act."*

And the House agree to the same.

That the House recede from its amendment to the title of the bill.

EDWARD P. BOLAND,
R. L. MAZZOLI,
DON EDWARDS,
ROBT. DRINAN,
ROBERT MCCLORY,
H. J. HYDE,

Managers on the Part of the House.

EDWARD M. KENNEDY,
BIRCH BAYH,
JOSEPH R. BIDEN, Jr.,
PATRICK J. LEAHY,
STROM THURMOND,
BOB DOLE,
THAD COCHRAN,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1482) to provide certain pretrial, trial, and appellate procedures for criminal cases involving classified information, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended by the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

DEFINITIONS (SEC. 1)

The Senate bill (sec. 1(a)) defined "classified information" to mean "any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security and any restricted data, as defined in section 2014(y) of title 42, United States Code." The House bill (sec. 113) defined classified information as "information or material that is designated and clearly marked or clearly represented, pursuant to the provisions of a statute or Executive order (or a regulation or order issued pursuant to a statute or Executive Order), as information requiring a specific degree of protection against unauthorized disclosure for reasons of national security or any Restricted Data, as defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y))".

The conferees agreed to the Senate provision.

The Senate bill (sec. 1(b)) defined "national security" to mean the "national defense and foreign relations of the United States". The House bill contained no comparable provision.

The conferees agreed to the Senate provision.

PRETRIAL CONFERENCE (SEC. 2)

The Senate bill contained a provision (sec. 2) which required the court, upon motion of any party, to hold a pretrial conference to make determinations concerning the timing of certain procedures concerning classified information as well as any other matters which might

promote a fair and expeditious trial. The House bill contained a similar provision (sec. 101) with additional language stating that submissions made by the defendant or his attorney in the course of such proceedings could not be used against him unless they were in writing and signed by the defendant and his attorney.

The conferees agreed to the Senate provision with the additional House language.

PROTECTIVE ORDERS (SEC. 3)

The Senate bill contained a provision (sec. 3) which authorized the court to issue a protective order "to guard against the compromise in connection with a prosecution by the United States of any classified material." The House bill had a similar provision (sec. 109(a)) which, however, made clear that the court could issue such an order only "to protect against the disclosure of any classified information disclosed by the United States to any defendant."

The conferees agreed to the House provision.

DISCOVERY OF CLASSIFIED INFORMATION BY DEFENDANTS (SEC. 4)

The Senate bill contained a provision (sec. 4) which permitted the court to authorize the deletion from, summarization of, or stipulation concerning, any classified information from documents made available by the government to the defendant, and stated that a motion requesting such authority could be heard in camera and ex parte. The House bill contained a similar provision (sec. 109(b)) which related only to materials which the defendant sought from the government through discovery, and took effect only after all determinations made by the court pursuant to Rule 16 of the Federal Rules of Criminal Procedure had been made.

The House bill also required the court to find that the actions requested by the government would "provide the defendant with substantially the same ability to prepare for trial or make his defense as would disclosure of the specific classified information." Finally, the House provision required that if the court granted an order pursuant to an ex parte motion for deletion, summarization or stipulation, the entire text of the government's ex parte statement to the court should be sealed and preserved for the appellate court in the event of an appeal.

The conferees agreed to the Senate provision but limited its effect only to materials provided through the discovery process and added the provision of the House bill requiring the record of any ex parte statement to be sealed and preserved for the appellate court in the event of an appeal.

NOTICE OF DEFENDANT'S INTENTION TO DISCLOSE CLASSIFIED INFORMATION
(SEC. 5)

The Senate bill contained a provision (sec. 5) requiring a criminal defendant to notify the government and the court, in advance, of any classified information that the defendant reasonably expected to disclose at trial or pretrial proceedings. The defendant could not disclose the information until the government had had an opportunity to seek

a hearing on the matter or appeal a determination made at such a hearing. Further, the provision stipulated that where the defendant did not comply with the notice requirement, the court could preclude the defendant from disclosing the classified information.

The House bill contained similar, more detailed procedures for notice (sec. 102 (a) and (b)) and a penalty provision (sec. 106) which required the court, before it prohibited the defendant from disclosing the classified information at issue, to find that the defendant reasonably could have anticipated the need to disclose the classified information.

The conferees agreed to the Senate provision with minor technical changes.

PROCEDURE FOR CASES INVOLVING CLASSIFIED INFORMATION (SEC. 6)

The Senate bill contained a provision (sec. 6) establishing procedures by which the government could request a hearing on issues involving classified information brought to the attention of the government by the defendant pursuant to the provisions of section 5 or about which the government had otherwise learned. The procedures provided that the government could submit an ex parte statement to the court explaining the sensitivity of the classified information at the time a hearing was requested and that the government could request that the hearing, or a portion thereof, be in camera.

The Senate bill further provided that before any hearing was held pursuant to section 6, notice was to be given to the defendant of the information at issue and that such notice might be by "generic category" if the information at issue had not been made available previously to the defendant through discovery or otherwise.

After the hearing, the court was required to determine whether and in what manner classified information could be disclosed by the defendant. The court could, if it found that the defendant's right to a fair trial would not be prejudiced, order that a stipulation of facts or a summarization of information be disclosed in lieu of the specific classified information. If such forms of alternative disclosure were not possible and the government objected to the disclosure of the classified information at issue, the court was to decide whether to declare a mistrial, dismiss the case or specific counts thereof, preclude the testimony of a witness, find against the government on an issue or anything else required by the interest of justice.

Further, if new information later came to light that would have affected the court's determination that certain classified information could not be disclosed, the defendant then could move that the court reconsider its ruling. If the court granted this motion, a second hearing could be held under the procedures of the bill.

Finally, section 6 contained a requirement that the government provide the defendant with the information it would use to rebut the specific classified information which the court had ruled could be disclosed in connection with the trial, unless the court found that the interest of justice would not so require.

The House bill contained provisions (sec. 102 (c), (d) and (e); sec. 103, 104, 105) basically analogous to the Senate provisions, but with the following differences:

In addition to responding to the notice by the defendant of classified information that might be disclosed in connection with the trial, the government, on the petition of the Attorney General, could also request a hearing in any other situation where the government wished to resolve issues concerning classified information before trial, regardless of whether the government had any knowledge of possible disclosure (sec. 102(c)).

The determination to be made by the court before trial as to the matters involving classified information would be those rulings on the use, relevance, or admissibility of the information as otherwise would be made at trial (sec. 102 (a), (b) and (c)).

The court would hear all arguments, and make its decision, concerning questions of use, relevance or admissibility before receiving any affidavit from the government about the sensitivity of the classified information at issue.

There would be a separate hearing on the question of alternative disclosure after rulings on use, relevance or admissibility. A stipulation of facts or summary would be permitted if the alternative form of disclosure would provide the defendant with substantially the same ability to make his defense as would use of the specific classified information.

The possible rulings against the government where the government still objected (after appeal) to disclosure of specific classified information did not include mistrial, since otherwise the defendant could have been placed in double jeopardy.

The government was required specifically, among the information to be provided reciprocally to the defendant, to furnish the names of witnesses, taking into consideration possible harm or intimidation to the witness or harm to the national security; and to furnish a bill of particulars as to the parts of the indictment or information to which the specific classified information that the government wished to make the subject of a hearing pertained. All the foregoing requirements, however, were not to apply when the classified information at issue had been provided by the government to the defendant, unless the interests of fairness so required.

The conferees agreed to the Senate provision with language changes and additions which incorporate the additional House provisions.

The conferees note that although the rulings which the judge will make as to use, relevance or admissibility under the conference substitute will be made before any explanation of the basis for classification, the conferees agree that nothing in the conference substitute would prevent the court from examining the specific classified information at issue in considering all questions of use, relevance or admissibility. At the same time, the conferees agree that, as noted in the reports to accompany S. 1482 and H.R. 4736, nothing in the conference substitute is intended to change the existing standards for determining relevance and admissibility.

The conferees also agree that although the standard in the conference substitute for alternative disclosure, "substantially the same ability to make his defense," is intended to convey a standard of substantially equivalent disclosure, precise, concrete equivalence is not intended. The fact that insignificant tactical advantages could accrue to

the defendant by the use of the specific classified information should not preclude the court from ordering alternative disclosure.

The conferees further note that, although the language of the conference substitute does not specifically require reciprocal provision by the government of the names of government witnesses, witnesses names may, in appropriate circumstances, be required to be provided, if, taking into consideration all that the defendant has revealed to the government, the interest of fairness would suggest such provision. The conferees agree that the reciprocal provision of information by the government to the defendant may not be in the "interests of fairness" in cases where the defendant has received the classified information in question from the government by discovery.

INTERLOCUTORY APPEAL

The Senate bill contained a provision (sec. 7) providing for an expedited interlocutory appeal of all decisions by the court under the provisions of the bill authorizing disclosure of classified information, imposing sanctions for nondisclosure of classified information or refusing a protective order sought by the government.

The House bill contained a similar provision (sec. 108) which permitted appeals not undertaken for purposes of delay.

The conferees agreed to the Senate provision.

PRECAUTIONS BY COURT (SEC. 8(b))

The Senate bill contained a provision (sec. 8(b)) which authorized the court, where classified information was involved, to "order admission into evidence of only part of a writing, recording, or photograph, or * * * order admission into evidence of the whole * * * with excision of some of the classified information contained therein."

The House bill contained a provision (sec. 109 (d) and (e)) which restated the Rule of Completeness, but required the court to conduct a hearing whenever the rule was invoked.

The conferees agreed to the Senate language but added the phrase "unless the whole ought in fairness be considered," to make it clear that it was a determination under the Rule of Completeness that was to be made by the Court.

SECURITY PROCEDURES (SEC. 9)

The Senate bill contained a provision (sec. 9) which directed the Chief Justice, in consultation with the Attorney General, the Director of Central Intelligence, and the Secretary of Defense, to issue security procedures to protect classified information submitted to the Federal courts.

The House bill contained a provision (sec. 110) which required the Chief Justice, in consultation with the Attorney General and the Director of Central Intelligence, to prescribe such procedures and to submit them to the appropriate committees of Congress. The procedures would take effect 45 calendar days after such submission.

The Conferees agreed to the House provision, but added the Senate requirement that the Chief Justice consult with the Secretary of Defense.

AMENDMENTS TO THE ACT (SEC. 11)

The Senate bill contained a provision (sec. 11) which stated that sections 1 to 10 could be amended in the same manner, described in 28 U.S.C. 2076, as are the Rules of Evidence.

The House bill contained no similar provision.

The conferees agreed to the Senate provision. (The House conferees note that in the House of Representatives, both the Permanent Select Committee on Intelligence and the Committee on the Judiciary share jurisdiction over the subject matter of the Act. It is expected that such joint jurisdiction will continue to be reflected in any referrals to committees of changes to the Act submitted by the Supreme Court to the Congress.)

ATTORNEY GENERAL GUIDELINES (SEC. 12)

The Senate bill contained a provision which required promulgation of Attorney General guidelines for dealing with the factors to be considered in a prosecution where there is a possibility that classified information would be revealed during trial. It also required written findings on any decision not to prosecute. The House bill contained no comparable provisions. The conferees agreed to the Senate's provisions.

The conferees agree that, while the written findings must cover the factors listed in section 12(b) that influence decisions not to prosecute, they need not necessarily involve or discuss the very sensitive classified information which leads to the decision not to prosecute. Thus, information which reveals specific intelligence arrangements with foreign governments, intelligence sources or methods, or the essence of the sensitive information at issue in the case can be described in a manner that protects the details that make the information so sensitive. The important point is that the description convey the importance or sensitivity of the information involved. In cases where it is necessary to use classified information to describe the classified information at issue or the consequences that would result from its disclosure, special precautions should be taken to insure that the information is handled in an appropriate manner. In these cases, the findings should be safeguarded in accordance with procedures agreed upon by the Attorney General, Secretary of Defense, and the Director of Central Intelligence.

REPORTS TO CONGRESS (SEC. 13)

The Senate bill contained provisions (sec. 12(c) and 13) which dealt with reports by the Attorney General to the Congress. Under section 12(c) the report, either written or oral, was to be made on a semiannual basis to the two Intelligence Committees, and was to include all cases where a decision not to prosecute was made for reason of national security. Section 13 required annual reports to the appropriate committees of Congress on the operation and effectiveness of the Act.

The House bill (sec. 202) required the Attorney General to report annually to the two Intelligence Committees and to the Chairmen and Ranking Minority Members of the House and Senate Judiciary Committees on the operation and effectiveness of the Act. Such report was to include summaries of those cases in which a decision not to prosecute was made for reason of national security.

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The conferees adopted the Senate language, but included the House provision requiring reporting to the Chairmen and Ranking Minority Members of the Judiciary Committees.

FUNCTIONS OF ATTORNEY GENERAL (SEC. 14)

The House bill contained a provision (sec. 112) authorizing the Deputy Attorney General or a designated Assistant Attorney General to exercise the functions and duties of the Attorney General under the Act.

The Senate bill contained no similar provision.

The conferees agreed to the House provision.

EFFECTIVE DATE (SEC. 15)

The House bill contained a provision (sec. 301) which provided that the bill was to become effective on the date of its enactment but was not to apply to any prosecution formally initiated prior to such date.

The Senate bill contained no similar provision.

The conferees agreed to the House language.

TITLE OF THE BILL

The conferees agreed to the title of the Senate bill which reads:

An Act to provide certain pretrial, trial, and appellate procedures for criminal cases involving classified information.

EDWARD P. BOLAND,
R. L. MAZZOLI,
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